THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUN 23 2003

The Honorable Benjamin Cardin
House of Representatives
Washington, D.C. 20515

Dear Mr. Cardin:

Thank you for your letter concerning how the HIPAA Privacy Rule may affect Congressional staff who request health information on behalf of constituents. As you know, the Privacy Rule protects and gives patients control over their health information, yet is balanced to permit continued access to quality health care. As such, in the following ways the Rule specifically allows entities covered by HIPAA to disclose protected health information to persons, including Congressional staff, when they are acting on behalf of individuals whose health information is protected.

A covered entity, such a public or private health plan, can disclose protected health information concerning a constituent to a Congressional office or staffer, when the constituent has identified the office or staffer as being involved with the constituent's health care, or payment related to the constituent's health care. In this case, the covered entity may disclose information that is directly relevant to this involvement by the office or staffer, if in the exercise of professional judgment, the covered entity believes that doing so is in the best interests of the constituent. 45 C.F.R. § 164.510(b)(3). Thus, for instance, when a constituent sends a letter or email to a Congressional office requesting intervention with respect to a health care claim, the covered entity could certainly conclude, on that basis, that the constituent has identified the Congressional office or staffer as involved on the constituent's behalf, and therefore disclose information directly relevant to that involvement. As suggested in your letter, §164.510(b)(2) of the Privacy Rule also would permit disclosure to a Congressional staffer if the constituent was present and assented, or, given the opportunity, did not object, to the covered entity sharing information with the staffer, although we expect that this circumstance would be fairly unusual.

Your letter also correctly suggests that a covered entity may disclose information to Congressional staff if the constituent has executed a valid authorization for the disclosure. While an explicit authorization is *not* necessary (see discussion above), it has a number of advantages. For example, it clarifies the purpose of the advocate's involvement and builds public confidence that patient information is being protected. Further, an executed authorization eliminates any uncertainty that might arise when, as described above, a covered entity is determining whether the constituent has actually identified the staffer as involved in the constituent's treatment or payment for health care. The Privacy Rule sets forth the required elements of a valid authorization but, to permit flexibility appropriate to the wide range of covered entities and circumstances where authorizations may be requested, it does not mandate the use of a particular form. Thus, covered entities are free to develop their own authorization form, or to use forms submitted by third parties, as long as the requirements of the Privacy Rule are met.

I trust these clarifications will be helpful to you and Congressional staff who so frequently assist constituents in health care related matters. Your staff may contact Richard Campanelli, Director of our Office for Civil Rights, which is responsible for Privacy Rule compliance, if we can be of further assistance. I understand that your office is sponsoring a forum on the Privacy Rule in your home district, and I am pleased that a senior expert on the Privacy Rule from our Office for Civil Rights will be participating. Please call me if you have any further thoughts or questions.

Sincerely,

Tommy G. Thompson